

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREG ABBOTT, in his capacity as Governor of the State of Texas, and THE STATE OF TEXAS,

Defendants.

Civil Action No. 1:23-cv-00853-DAE

**UNOPPOSED MOTION OF LAW OF IMMIGRATION REFORM LAW INSTITUTE  
FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

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1. Pursuant to FED. R. CIV. P. 7, the Immigration Reform Law Institute (“IRLI”) respectfully requests this Court’s leave to file the accompanying brief as *amicus curiae* in opposition to Plaintiff’s motion for preliminary injunction. IRLI’s counsel has conferred with counsel for all parties; Plaintiff has stated that it takes no position, “provided that the brief complies with the applicable timing and length requirements of the FRCP and local rules,” and Defendants consent to the filing of the attached *amicus* brief.

2. IRLI is a nonprofit 501(c)(3) public interest law firm dedicated both to litigating immigration-related cases in the interests of United States citizens and to assisting courts in understanding federal immigration law. IRLI has litigated or filed *amicus curiae* briefs in a wide variety of immigration-related cases. For more than twenty years the Board of Immigration Appeals has solicited supplementary briefing, drafted by IRLI staff, from the Federation for American Immigration Reform, of which IRLI is a supporting organization.

3. ““The extent, if any, to which an *amicus curiae* should be permitted to participate in a pending action is solely within the broad discretion of the district court.”” *Sierra Club v. Fed. Emergency Mgmt. Agency*, 2007 U.S. Dist. LEXIS 84230, at \*2 (S.D. Tex. Nov. 14, 2007) (quoting *Waste Mgmt. of Pa., Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995)). Unlike the corresponding appellate rules, the federal and local rules applicable here do not specifically address *amicus* briefs. Nonetheless, IRLI looks to the appellate rules’ criteria for granting leave to file *amicus* briefs to support their motion. The Advisory Committee Note to the 1998 amendments to Rule 29 explains that “[t]he amended rule … requires that the motion state the relevance of the matters asserted to the

disposition of the case” as “ordinarily the most compelling reason for granting leave to file.” FED. R. APP. P. 29, Advisory Committee Notes, 1998 Amendment. As now-Justice Samuel Alito wrote while serving on the U.S. Court of Appeals for the Third Circuit, “I think that our court would be well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29’s criteria as broadly interpreted. I believe that this is consistent with the predominant practice in the courts of appeals.” *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 133 (3d Cir. 2002) (citing Michael E. Tigar and Jane B. Tigar, FEDERAL APPEALS—JURISDICTION AND PRACTICE 181 (3d ed. 1999) and Robert L. Stern, APPELLATE PRACTICE IN THE UNITED STATES 306, 307-08 (2d ed. 1989)). Now-Justice Alito quoted the Tigar treatise favorably for the statement that “[e]ven when the other side refuses to consent to an amicus filing, most courts of appeals freely grant leave to file, provided the brief is timely and well-reasoned.” 293 F.3d at 133.

4. IRLI’s proffered brief will bring the following relevant matters to the Court’s attention:

- That Texas’s exercise of its retained, inherent authority to repel an invasion (as recognized in Article I, Section 10, Clause 3, of the United States Constitution) is non-justiciable.
- That the Rivers and Harbors Act’s requirement that Texas receive federal consent to its barriers is unconstitutional as applied to Texas’s valid exercise of its constitutional power of self-defense, because, under the

Constitution, a State may exercise that power *without* the consent of Congress.

5. These issues are relevant to this Court's decision on Plaintiff's motion for preliminary injunction, and IRLI's brief may aid the Court.

For the foregoing reasons, IRLI respectfully requests that the Court grant its motion for leave to file the accompanying brief as *amicus curiae*.

Respectfully submitted on August 14, 2023,

/s/ Matt Crapo  
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## **DISCLOSURE STATEMENT**

Pursuant to Fed. R. Civ. P. 7.1, *amicus curiae* Immigration Reform Law Institute makes the following disclosures as a non-governmental corporate party:

- 1) All parent corporations: None.
- 2) All publicly held companies that hold 10% or more of the party's stock: None.

/s/ Matt Crapo  
MATT A. CRAPO

## **CERTIFICATE OF CONFERENCE**

I hereby certify that I conferred with counsel for both Plaintiff and Defendants regarding this motion. Plaintiff has stated that it takes no position, "provided that the brief complies with the applicable timing and length requirements of the FRCP and local rules," and Defendants consent to the filing of the attached *amicus* brief.

/s/ Matt Crapo  
MATT A. CRAPO

## **CERTIFICATE OF SERVICE**

I hereby certify that on August 14, 2023, a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) and served on all counsel of record.

/s/ Matt Crapo  
MATT A. CRAPO